MR. ZAUNER: Well, I think what we are looking at 1 2 is the way the Commission looks at these things, not 3 particularly the way the sentencing guidelines look at these things. And --4 MR. MARINO: Well, the Commission looked at these 5 6 things --7 MR. ZAUNER: -- the Commission --8 MR. MARINO: -- the way President Bush looked at 9 It quoted him verbatim and President Bush used those 10 words -- racketeering and criminal enterprises? 11 MR. ZAUNER: The way I read the Williamsburg case, 12 5 FCC Record 3035, there the Commission appears to say that 13 felonious drug-trafficking by definition involves a systematic 14 devotion to a criminal enterprise and I think what we have 15 here is a conviction for drug-trafficking. This was not just 16 a conviction as my good colleague said of an individual for 17 growing marijuana plants, it was a conviction for intending to 18 distribute the plants or the processed marijuana derived from 19 those plants to another person or persons. 20 MS. GREENE: I understand what you're saying is 21 that any conviction that involves the kind of language to 22 which Mr. Richards' pleaded with, intent to distribute, per se 23 is disqualifying --24 MR. ZAUNER: That's our --25 -- under the drug-trafficking policy MS. GREENE:

without regard to any of the circumstances or the extent of 2 the activity. Because as I read Williamsburg, the Commission 3 is talking about the systematic devotion to a criminal enterprise and you must be saying then that the growing of 4 5 this --That's right. 6 MR. ZAUNER: 7 MS. GREENE: -- prohibited substance is a 8 systematic devotion. As the Commission had said in the 9 MR. ZAUNER: 10 Williamsburg case, the drug conviction is itself sufficient basis for revocation and that's at 4824. 11 12 MR. MARINO: But are they talking about that particular drug conviction? 13 14 MR. ZAUNER: I am frankly amazed, if you don't 15 mind, that when I come in here and I hear people talking about 16 what Mr. Richards has done as not a serious violation of the 17 law. He was convicted of committing a felony. 18 But the Commission, Mr. Zauner --MS. GREENE: 19 MR. ZAUNER: -- sentenced to seven years -- I'm 20 sorry, seven months' arrest. This is a serious --21 MR. MARINO: House arrest. 22 MR. ZAUNER: -- well, it's still an arrest. The 23 fact that our prisons may be overcrowded and we have to 24 sentence people to house arrest doesn't mean that you're not 25 under arrest, I means your form of incarceration is different.

I agree that there are degrees. Even 1 MR. MARINO: 2 the great Draconian Draco made distinctions between degrees of 3 offenses. 4 MR. ZAUNER: I don't think we should be sitting 5 here trying to -- the degrees of offenses. He has been 6 convicted of a felony. 7 MR. MARINO: Well, wasn't that -- that was for the 8 federal district court judge to do, Mr. Zauner, right? 9 The district court judge found this the expert in that area. 10 man quilty and sentenced him. 11 MR. ZAUNER: Correct. 12 MR. MARINO: And he also had the discretion of 13 telling the FCC this man is such a drug-trafficker that you 14 shouldn't -- he could have told him you will not apply for 15 renewal of your broadcast station, or maybe he couldn't. 16 don't know, but he certainly --17 MR. ZAUNER: I don't know whether he had the 18 authority. 19 -- he certainly could have signaled to MR. MARINO: 20 the FCC don't renew his license. 21 MR. ZAUNER: I don't know what was in the judge's 22 mind, I don't know what was presented to him at the time he 23 decided that he was not going to deny and federal benefits to 24 Mr. Richards and you don't know and nobody else in this room 25 knows. The important point is that it was not this judge's

primary function to determine whether or not this particular 1 2 individual should or should not hold an FCC license. the function of this agency and this agency has some very 3 strong policies --4 5 MR. MARINO: I agree. 6 MR. ZAUNER: -- that have been enunciated through a 7 series of public notices and modifications of its character 8 policy statement. And if you look at the character policy 9 statement it begins sort of broad and it says, "We are only 10 looking for crimes that are so egregious as to shock the 11 conscience and evoke almost universal disappropriation." 12 Commission then later back off of that, it comes out with a 13 public notice, 4 FCC Record 7533 in 1989, where it says, "It 14 will take all appropriate steps including initiation of 15 license revocation proceedings when information comes to its 16 attention that a licensee or its principals have been 17 convicted of drug-trafficking." Then it further --18 MS. GREENE: And it also talks about absent 19 extenuating or mitigating circumstances which seems to --20 MR. ZAUNER: Right. 21 MS. GREENE: -- me to suggest that it is 22 appropriate to consider what is behind the conviction. 23 MR. ZAUNER: I don't think it's appropriate to 24 consider what's behind the conviction. I think when the 25 Commission talks about mitigation it talks about it in very,

1	very narrow context. It says there are a number of elements
2	that it will look at. One was the willfulness of the action.
3	The second is the frequency of the action. The third is the
4	currentness of the action, how recent was it. The fourth is
5	the seriousness of the action. And the fifth is any
6	indications of rehabilitation.
7	MS. GREENE: And you're saying under all of these
8	circumstances then he loses?
9	MR. ZAUNER: Under these circumstances I think he
10	loses. The willfulness is obvious, he went out and cultivated
11	the drug. The frequency, he was a heavy user. Every time he
12	lit up he was in fact violating the law.
13	MS. GREENE: Well, let's stop there for a minute.
14	The Commission made I think has made a distinction in its
15	drug policy statement between trafficking and using, the heavy
16	hand, the greatest concern goes with trafficking, and I think
17	we have to step back and appreciate that use does not
18	automatically disqualify.
19	MR. MARINO: Is use even a crime?
20	MR. ZAUNER: Use is a crime. Possession
21	MR. MARINO: Use, possession?
22	MR. ZAUNER: is a crime and I think
23	MR. MARINO: Possession with intent?
24 25	MR. ZAUNER: maybe not in every state but in
-5	MR. MARINO: Possession with intent to distribute?

1	Did Congress when it reached this mere marijuana use make that
2	a federal crime?
3	MR. ZAUNER: Well, wait a minute. We're talking
4	now about state crimes and we're talking about federal crimes.
5	MR. MARINO: Right.
6	MR. ZAUNER: I don't know whether there is a
7	federal
8	MR. MARINO: Well, but that's what we're dealing
9	with here. There's got to be a conviction.
10	MR. ZAUNER: I'm sure there is.
11	MR. MARINO: Well, I want to know
12	MR. ZAUNER: Mere possession is a crime.
13	MR. MARINO: But the Commission is not interested
14	in misdemeanors, the Commission is interested in felonies,
15	right? And here we're dealing with felony
16	MR. ZAUNER: Here we are dealing with a felony.
17	MR. MARINO: which is possession with intent to
18	distribute.
19	MR. ZAUNER: Correct.
20	MR. MARINO: You need both elements.
21	MR. ZAUNER: Correct.
22	MS. GREENE: And we have no indication on this
23	record other than the circumstantial evidence referenced by
24 25	the judge, the scales, the heat-sealing equipment, that his
ادی	distribution intended distribution went beyond his friend

1	for whom he was allegedly doing a favor. There's nothing
2	no evidence to rebut that is there?
3	MR. ZAUNER: I don't think that's even relevant. I
4	think the fact is he intended
5	MS. GREENE: All we look at is what
6	MR. ZAUNER: He has a conviction and he
7	MS. GREENE: he pleaded to and it's intent to
8	distribute
9	MR. ZAUNER: Yes, and he
10	MS. GREENE: and that's it?
11	MR. MARINO: Mr. Zauner, would it have been
12	relevant if this gentleman instead of cooperating with DEA to
13	apprehend the Mexican drug smugglers had been in business with
14	him? Would that have been a different case?
15	MR. ZAUNER: I'm not sure that I understand your
16	question.
17	MR. MARINO: In other words
18	MR. ZAUNER: Sure, it would have been a different
19	case, it would have had different
20	MR. MARINO: involved in a criminal enterprise
21	and possibly even in racketeering? Would that be a different
22	case?
23	MR. ZAUNER: Well, it would
24 25	MR. MARINO: More serious, less serious, more
Æ J	aggravated, less aggravated?

It would certainly -- you know, I just 1 MR. ZAUNER: 2 don't know how to answer that. I don't know the facts and 3 circumstances surrounding the involvement with the Mexican 4 drug people. 5 MR. MARINO: What if they were his partners, like 6 he had -- like we have a partner in the Williamsburg case? 7 I just don't know. MR. ZAUNER: I mean, you're 8 asking me to speculate on something that might have been. It 9 wasn't and I --10 MR. MARINO: But you flat out -- is your position 11 flat out that any drug offense is automatically disqualifying 12 even if he was only going to distribute to his closest friend 13 let's say? 14 MR. ZAUNER: I think a felony conviction for drug 15 distribution is a disqualifying act and I think though that we 16 can look at mitigating circumstances. And I think that the 17 mitigating circumstances don't here warrant renewal of the 18 license despite the conviction. I think going through the --19 MS. GREENE: Are the letters from the -- there's 20 quite a point made by Mr. Richards about the judge's treatment 21 of the letters from people in the community who knew him. 22 What relevance have those been in this case? 23 MR. ZAUNER: Well, those letters evidence what --24 well, they are what they are. They are indications that there 25 are people in the community who know Mr. Richards and consider

1	him to be off good character despite the fact that he has a
2	conviction of marijuana. Each
3	MR. MARINO: Would they have been entitled I'm
4	sorry.
5	MR. ZAUNER: But just on one point the judge
6	made which I think does have some validity is that these
7	individuals all share a certain religious conviction with
8	Mr. Richards
9	MR. MARINO: Well, let me give you
10	MR. ZAUNER: But I don't mean they should be
11	discounted totally for that, but
12	MR. MARINO: Let me give you an analogy.
13	MR. ZAUNER: But that is a fact.
14	MR. MARINO: Let me give you an analogy. Assume
15	that this was not religious broadcasting but classical music
16	where the listeners are notoriously behind the broadcast. Are
17	we going to brush those aside the same way?
18	MR. ZAUNER: I didn't say you should brush this
19	aside. I didn't at all. I don't think I said that at all.
20	What I said was that that was a consideration in evaluating it
21	and I think it would be a consideration in evaluating a
22	classical music station too.
23	MR. MARINO: Even though because they liked his
24	programming? I mean, is this
25	MR. ZAUNER: Yeah.

1	MR. MARINO: a new standard?
2	MR. ZAUNER: Well, I think
3	MR. MARINO: Because the listeners like because
4	the listeners like his programming
5	MR. ZAUNER: Well, I don't think, I don't think the
6	analogy between classical music and religious programming
7	format is exactly on all four squares.
8	MS. GREENE: I'd like to get off of that analogy
9	MR. ZAUNER: Okay.
10	MS. GREENE: because I really am not sure that
11	the format has any relevance in this proceeding.
12	MR. ZAUNER: I know.
13	MS. GREENE: What I'm concerned about in the
14	letters is I guess really the weight that they bear in
15	demonstrating his rehabilitation and some of them are quite
16	eloquent about his admission of his wrongdoing and his efforts
17	to be helpful in the community apart from any effort to
18	promote the station itself. And does the Commission treat
19	that kind of statement from people who have seen him in the
20	community as bearing weight on the I guess the question of
21	rehabilitation which goes to your mitigation?
22	MR. ZAUNER: That's right, that's where I would
23	think that that would be under one of the four or five
24 25	elements that the Commission considers under mitigation and
23	rehabilitation

MS. GREENE: But do they not carry --1 2 MR. ZAUNER: Yes. 3 MS. GREENE: -- do they not carry fairly significant weight as a reflection of the post-offense conduct and reputation in the community even though the people who are 5 6 writing them know him because they have a common affinity or a common interest? 7 8 I think they do carry some weight. Ι MR. ZAUNER: 9 think they certainly are something that can be considered 10 and -- but I think that the problem is looking at what I would 11 consider to be the more objective evidence, I have a real 12 problem finding that this evidence that's been submitted 13 establishes that Richard Richards has been rehabilitated. And 14 one of the things that I think you'll notice --15 MS. GREENE: Why do you have trouble finding that 16 the repeated drug testing with negative results does not reflect rehabilitation? 17 18 MR. ZAUNER: Thank you, that's just the point I was 19 going to. Yeah, the record now shows that recently since 1992 20 Mr. Richards has been clean, but he's been under a mandatory 21 drug-testing program. If he isn't clean he's going to go back 22 to jail. But look at what happened to him from the time he 23 was arrested until the time he went into the mandatory testing 24 program. 25 MR. MARINO: But that's because he was an addict,

right? Do we take into account that he was an addict? 1 2 MS. GREENE: Yeah, it's relevant because if the --3 on this record the criminal -- the behavior that for which he 4 was convicted is according to him the outcome of his use of marijuana and so I think the use of it is -- the likelihood of 5 continued use does carry some weight. 6 7 MR. ZAUNER: The man had been arrested, he was 8 facing criminal charges and he was continuing to smoke the 9 drug. He smoked it up until the time just before he went into 10 court and he knew that he was going to be placed under 11 mandatory testing and at that point suddenly he stops. 12 continues to test positive for months afterwards he still had 13 so much in his system. 14 MR. MARINO: Do we have a different case if prior 15 to the conviction the record showed that he wasn't a heavy 16 user of marijuana but he sure was making a mint selling 17 marijuana to 12-year-olds? In other words, he was --18 MR. ZAUNER: No, I don't think -- I think we 19 have --20 MR. MARINO: That wouldn't be a different case? 21 MR. ZAUNER: We have a conviction here and I don't, 22 I don't think we should be looking behind the conviction to 23 evaluate the weight that should be given to it. 24 that he was convicted of for what he was convicted of and he 25 received the sentence that he was sentenced.

Did the Commission look behind the 1 MS. GREENE: 2 conviction in the Williamsburg case? 3 MR. ZAUNER: The Commission in the Williamsburg case noted what the conviction was for and as I've said 4 before, they found that the drug conviction itself was 5 sufficient basis for revocation of the license. 6 7 MS. GREENE: Well, I'm not sure that's exactly 8 They -- it first looking at the attempt accurate, Mr. Zauner. 9 to -- perjury if I recall and the state -- and the provision 10 of a false statement to the sentencing judge in which are both 11 quite relevant to the Commission's concerns articulated 12 throughout the original character policy statement about the 13 Commission's ability to rely on the veracity and --14 MR. ZAUNER: With all due respect, I disagree with 15 your interpretation of the Williamsburg case. I agree --16 MS. GREENE: And then it said also the drug 17 conviction carries weight. So it's hard to -- and the nature 18 of the drug conviction was for conspiracy to distribute and 19 there was some information in the opinion that indeed this was 20 a much more developed criminal enterprise than what we had 21 evidence of in the Richards' case. 22 MR. ZAUNER: I don't think the Commission should be in the business of deciding the extent to which somebody is 24 engaged in a criminal enterprise. You're engaged in a 25 criminal enterprise, you're engaged in a criminal enterprise

1	and whether it's
2	MR. MARINO: There is a
3	MR. ZAUNER: of a large scale or a small scale,
4	it's
5	MR. MARINO: Mr. Zauner, Mr. Zauner. There is a
6	concept of statutory construction that you take words with
7	their associates, you in construing what criminal
8	enterprise is you look at the next word that Congress has
9	associated with that word, and I just read to you from the
10	sentencing guidelines which are very specific that criminal
11	enterprise is associated with racketeering and the RICO
12	Statute and everything that goes with that statute. Now, does
13	this case come close to that, Mr. Zauner, or is this a case
14	where possessing and distributing, it's a drug offense,
15	possessing and distributing drugs which is serious enough,
16	I'll agree with you, but it could be much more serious.
17	MR. ZAUNER: Sure, he could have murdered somebody
18	in the course of it but that's not what we're facing here.
19	MR. MARINO: He could what?
20	MR. ZAUNER: He could have murdered somebody in the
21	course of his
22	MR. MARINO: Criminal enterprise.
23	MR. ZAUNER: criminal enterprise.
24 25	MR. MARINO: Yeah.
25	MR. ZAUNER: But that's not before us. What's

before us is the case that we have and the fact that it could 2 be worse, it's irrelevant. MS. GREENE: So, you would make that distinction on 3 the basis of selling the controlled substance and doing a 4 5 favor for a friend and cultivating it? I would not draw a distinction there, 6 MR. ZAUNER: 7 and I don't think we should be looking at that. I think once 8 again we have the conviction based upon his intent to 9 distribute the plants or the processed marijuana derived from 10 these plants to another person or persons. Whether he was 11 going to give it way, whether he was going to sell it is 12 I think an example I gave at the hearing when irrelevant. this same question came up in discussion with the judge was 13 14 that if somebody is giving out poison do we care whether he's selling the poison or handing it out free? It's still poison 15 16 and it's still against the law. 17 MS. GREENE: I have one record question just to be 18 One of the arguments that Mr. Richards has made is that 19 of the 30-some plants he only intended really to keep and use 20 19 and I saw a stipulation, a joint exhibit and I wanted to be 21 sure that was admitted into evidence where you would had 22 agreed with that. Where the Bureau entered into a joint 23 stipulation that of the plants --24 MR. ZAUNER: Yeah, we --25 MS. GREENE: -- seized that some of them would have

1 been --2 MR. ZAUNER: What we did was we wanted to reach an 3 estimate of the amount of usable marijuana that would have 4 been drawn from the plants and it was for that purpose that we entered into a stipulation and that stipulation was a matter 5 6 of give and take between Mr. Schattenfield and myself. 7 MR. MARINO: It's not really -- I mean, we started 8 out I think all agreeing that we weren't going to go behind 9 the district court judge's judgment and the findings and now you -- aren't you really changing the facts when the two of 10 11 you stipulated --12 I think what we were looking at is the MR. ZAUNER: mitigation element. 13 14 That's a fair point. How about MR. MARINO: Okav. 15 the sentencing report? Is that available? And in future 16 cases just say if there are going to be a lot of these case 17 wouldn't it be helpful to have the sentencing report and maybe 18 the probation officer's evaluation? You'll get your rebuttal, 19 Mr. Schattenfield. You know, as a matter of putting before us 20 the real expert in this case --21 MR. ZAUNER: I attempted to get all the public 22 documents that I could on this case and that was not --23 MR. MARINO: Not available? 24 MR. ZAUNER: And I can't remember now, it may be 25 privacy rights or something of that nature.

1	MR. MARINO: But the applicant
2	MR. ZAUNER: I think that's the case. I just don't
3	recall any longer.
4	MR. MARINO: Yeah, I was just wondering though, do
5	you think it would help? In this case it sounded like there
6	was some cooperation between the Bureau and the applicant so
7	maybe if both the applicant and the Bureau think that it
8	contributes to an understanding of the case, is that something
9	that
10	MR. ZAUNER: That's something in future cases we
11	might look into. I think it's a good idea. Not in this case.
12	MR. MARINO: No, no, you're going to have your
13	rebuttal.
14	MR. SCHATTENFIELD: I just wanted to know if you
15	wanted us to cooperate now, that's
16	MR. MARINO: Yes.
17	MR. ZAUNER: I have nothing further.
18	MR. MARINO: Thank you very much.
19	MR. ZAUNER: Thank you.
20	MR. SCHATTENFIELD: Do I get 20 minutes again?
21	MS. GREENE: How about two minutes? You were
22	concerned that we wouldn't ask you
23	MR. SCHATTENFIELD: Before I start my two minutes
24	let me talk about the probation report. I think that would
25	have been very useful.

1	MR. MARINO: That would have been what?
2	MR. SCHATTENFIELD: Very useful. I don't know what
3	it said so when I say that I don't know with or without the
4	MR. MARINO: In future case
5	MR. SCHATTENFIELD: But yes, we
6	MR. MARINO: I guess maybe procedures are
7	different now. Are they available?
8	MR. SCHATTENFIELD: That's what I was going to say.
9	When we tried to get them they said that they couldn't release
10	them. We tried to get it.
11	MR. MARINO: Okay.
12	MR. SCHATTENFIELD: And whether that's true
13	MR. MARINO: Would it have helped you if the Bureau
14	had gone with you in requesting it?
15	MR. SCHATTENFIELD: I don't think so.
16	MR. MARINO: No? Okay.
17	MR. SCHATTENFIELD: Now, it might be that that's
18	the rule out there and it might have been they were putting us
19	off. We couldn't get it.
20	MR. MARINO: Go ahead.
21	MR. SCHATTENFIELD: I just have one or two quick
22	comments. One, Mr. Zauner talks about willfulness and that's
23	very important in this case. There is no drug case that
24	willfulness is not involved in. I can't see anybody by
25	accident growing marijuana and distributing it. Willfulness

Two, it's key and I think you focused on 1 is always present. 2 the real issue, Mr. Zauner and the Bureau would take away the 3 license for any felony violation and so therefore he equates 4 Williamsburg to this case. Williamsburg the man was convicted 5 of distributing, sale of an equivalent of over 1,000 marijuana plants. He used his facility to help the sale. He 6 misrepresented to the judge as you said in an effect to reduce 7 his sentence. He admitted to bribing a federal -- not a 8 9 federal, a law-enforcement officer to help him in his 10 enterprise. And he introduced no mitigation evidence and 11 that's what the Commission pointed out. 12 Now, if we're going to follow Mr. Zauner's 13 approach, then the Congress of the United States would have 14 had no reason whatsoever to put in a discretionary point for 15 Ιf the judges because obviously it was there for some reason. 16 in fact it made no difference because once you're convicted 17 and you lose you license then you don't have to --18 MR. MARINO: It's interesting that the 19 Commission -- the public notice mentioning that provision that 20 Congress had just put into the statute. 21 MR. SCHATTENFIELD: And let's see, I had one or two 22 other points. The fact that he only stopped, and that's an 23 interesting concept, the judge had that too, because he was on 24 probation, and that's a presumption based on nothing. 25 stopped. I don't know what's in his head. If we could do

1	that with people, the criminal system would be a lot better
2	off. We could identify the recidivist before we let him out.
3	We can't do that. He has stopped. He has said he will
4	continue to stop. I hope he does. But the fact that the
5	Bureau surmised and the judge said the only reason he stopped
6	was because he was on probation, there's not one scintilla of
7	evidence to know that and there's nothing you can't get
8	into his mind. He said he stopped, he said he had seen the
9	error of his ways, he said when he first started using
10	marijuana he thought it was not bad because he hurt no one but
11	himself and he now he sees the error of his ways.
12	Mr. Colson saw the error of his ways and now he's going around
13	giving lectures, you know, people see the error of their ways.
14	People sometimes get rapped on the snoot by a threat of
15	imprisonment and that's whether they're on probation or not
16	and they stop. That's hopefully, hopefully what our prisons,
17	what our criminal justice system should do. Whether it's
18	through terror or whether through whatever, convincing people
19	to stop what they're doing and he has stopped and there's no
20	sense conjecturing of whether tomorrow he's going to start
21	again because we have no evidence to base any conjecture on.
22	UNIDENTIFIED PARTY: Mr. Schattenfield, your two
23	minutes are up.
24	MR. SCHATTENFIELD: You never said that to him. I
25	would be happy to answer any questions you would like to

1	extend my two minutes.
2	MS. GREENE: I have no further questions.
3	MR. MARINO: Thank you very much both
4	MR. SCHATTENFIELD: Thank you very much for your
5	attention.
6	MR. MARINO: Mr. Schattenfield and Mr. Zauner.
7	MR. ZAUNER: Thank you.
8	MR. SCHATTENFIELD: Thank you very much.
9	(Whereupon, the matter concluded at 10:56 a.m.)
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